

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

In re T.A., a Person Coming Under the Juvenile Court
Law.

C080107

THE PEOPLE,

(Super. Ct. No. 69798)

Plaintiff and Respondent,

v.

T.A.,

Defendant and Appellant.

In 2013 the People filed four juvenile wardship petitions pursuant to Welfare and Institutions Code section 602 (undesigned statutory references are to the Welfare and Institutions Code.) Those petitions included allegations of assault, vandalism, and violating probation. In October 2013 the juvenile court adjudged the minor T.A, born in March 1998, a ward of the court and placed her at the Phoenix House Academy, a group home.

In January 2014 the minor was terminated from the Phoenix House Academy and the People filed another wardship petition. Another petition was filed in April 2015,

when the minor was terminated from a second residential placement. The probation department then recommended the minor be placed in an out-of-state facility. The juvenile court nevertheless released the minor into her mother's care. The minor was later arrested for violating her probation and the court ordered her placed at Clarinda Academy in Iowa.

The minor appeals. She contends the juvenile court abused its discretion in committing her to an out-of-state placement.¹ We affirm.

BACKGROUND

On March 7, 2013, the minor was arrested and booked into the Juvenile Justice Center after she threw a gallon of milk at her mother. She was released on a promise to appear. The minor was arrested again on March 18, 2013, this time for assaulting her brother. She was again booked into the Juvenile Justice Center.

On March 20, 2013, the People filed a wardship petition pursuant to section 602, alleging the minor committed two counts of battery, one upon her mother and one upon her brother. The minor was released into her mother's custody pending the jurisdictional hearing.

The following evening, the minor left her mother's home without permission, in violation of home supervision. A missing person's report was filed but the minor was located and detained in the Juvenile Justice Center.

On March 26, 2013, the minor's probation officer filed a notice with the juvenile court recommending the minor remain detained in the Juvenile Justice Center pending completion of the court proceedings. That same day, the minor was released from the

¹ The People contend the issue on appeal is moot because the minor has completed the out-of-state program and is no longer under the supervision of the probation department. The People, however, offer no reliable evidence to support their claim of mootness. Accordingly, we consider the merits of the appeal.

Juvenile Justice Center into her mother's custody and placed on an electronic monitoring program (EMP).

On April 5, 2013, the juvenile court placed the minor on informal probation under section 654.2 and ordered the minor to remain on the EMP for two weeks. Two weeks later, the minor's mother reported improvement in the minor's behavior and the EMP was removed at the mother's request.

On April 24, 2013, the minor stayed out of her mother's home all night. Two days later, the minor was suspended from school for being "high" and the school began expulsion proceedings. That same night, the minor left her mother's home and when her mother found her and attempted to turn her in, the minor fled from a moving vehicle. Consequently, the minor's probation officer filed a notice recommending that informal probation be terminated and the minor be placed on formal probation. The juvenile court placed the minor back on the EMP and ordered her to attend Children's Home School.

On May 17, 2013, the minor admitted the allegation she committed a battery upon her mother; the People dismissed the remaining allegation. The juvenile court placed the minor on informal probation pursuant to section 725 and again released her into her mother's custody.

On July 5, 2013, the People filed a notice of hearing and request for order to show cause. The People alleged the minor violated the terms and conditions of her probation by violating her curfew and failing to attend court-ordered substance abuse counseling. As a result, on July 12, 2013, the juvenile court placed the minor on formal probation and EMP, and ordered her to attend counseling.

Days later, the People filed a wardship petition. Once again, the People alleged that the minor committed a battery upon her mother, this time hitting her mother in the face during an argument. The minor was detained in the Juvenile Justice Center pending

a contested jurisdictional hearing. The minor subsequently admitted the allegation and was released into her mother's custody pending the dispositional hearing.

On August 22, 2013, the minor got into an argument with her mother on the way home from school. Once home, the minor kicked a large hole in a closet door, then ran away from home. The minor was later detained by the police; she admitted the offense and was booked into the Juvenile Justice Center. Again, the People filed a wardship petition, this time alleging the minor vandalized her mother's property. The minor was again released into her mother's custody.

A few weeks later, on September 17, 2013, the People filed a wardship petition alleging the minor had violated the terms of her release in that on September 11, 2013, she was taken by ambulance to the hospital after she was found severely intoxicated in a park. The court ordered the minor detained at the Juvenile Justice Center pending the dispositional hearing.

On October 9, 2013, the juvenile court adjudged the minor a ward of the court and placed her in a group home for a period not to exceed six months. The minor was accepted into the Phoenix House Academy group home in Lake View Terrace, California. She was transported to Phoenix House Academy on October 28, 2013.

On January 16, 2014, the People filed a wardship petition alleging that on January 10, 2014, the minor's probation officer received notification she was being terminated from the Phoenix House Academy for defiant behavior, consistent disruption to scheduled activities, inability to follow structure, repeated verbal altercations, being in the shower with another client, and "being the focus of negativity in the treatment community." The minor was transported back to Northern California on January 17, 2014, and was detained in the Juvenile Justice Center pending replacement under section 737. On February 13, 2014, the minor was placed in the Family Life Center in Petaluma, California.

On April 7, 2015, the minor's probation officer received notice that the minor was being terminated from the Family Life Center for running away for several hours at a time, continuing to go in and out of structure, threatening other kids in the program, and escalating her behavior. As a result, on April 9, 2014, the minor was transported back to San Joaquin County and detained in the Juvenile Justice Center.

On April 10, 2015, the People filed another wardship petition under section 602. The minor was approved for placement at Mingus Mountain Academy in Arizona; the "SMART Committee" (the Committee) approved the minor's out of state placement. In reaching its decision, the Committee reviewed the minor's history and found she had "specific treatment needs that are best provided in a high structure treatment setting that is offered in residential placement." The Mingus Mountain Academy, the Committee concluded, would satisfy those specific needs; equivalent facilities in California were neither available nor adequate.

The Mingus Mountain Academy, however, would not have an opening until August, so the minor was referred to and accepted for placement at the Clarinda Academy in Iowa. The Clarinda Academy, like the Mingus Mountain Academy, would give the minor the opportunities she needed, opportunities not available to her in California.

Rather than place the minor out of state, on April 29, 2015, the juvenile court suspended the placement orders and returned the minor to her mother's custody on home supervision. The court also ordered the juvenile placed on the EMP.

On May 29, 2015, the minor met with her probation officer and said she no longer wanted to live with her mother because her mother was "drunk all of the time." The officer advised the minor of her options, which the minor did not like, and the minor ended the meeting.

On June 5, 2015, the Children's Home School advised the minor's probation officer that the school was having a lot of problems with the minor bringing pornographic images on a cell phone to school and not following the dress code. Days later, the probation officer received a call from "Prewrap" advising that the minor continued refusing to participate in court-ordered services.

On June 10, 2015, the minor's probation officer spoke with the school principal. The principal said the school was continuing to have problems with the minor; she was disrespectful to staff, disruptive in class, continued to violate the dress code, and refused to participate in the required therapy. The People subsequently filed a wardship petition alleging the minor had violated her probation. The minor was arrested and detained in the Juvenile Justice Center.

On June 18, 19, 22, and 23, 2015, the juvenile court presided over a contested hearing on the probation violation and probation modification. At that hearing, probation officer Kimberly Ortega acknowledged it was the "placement unit" that determined Clarinda Academy was the appropriate placement for the minor, not her, and she had "100 percent trust" in that unit. Ortega was confident the placement unit had "exhausted all options for [the] minor. And that that is the best place for her at this time." No one from the placement unit testified.

At the conclusion of that hearing, the court instituted the placement orders and ordered the minor placed at Clarinda Academy in Iowa. In support of its decision, the juvenile court found: "The minor is in need of guidance, supervision, and stricter sanctions. She was referred to Clarinda Academy in Iowa. She's been accepted. The minor is in need of a highly structured program, which provides extensive counseling and education services that will address the minor's treatment needs. The minor will be afforded those opportunities at Clarinda Academy."

The minor filed a timely notice of appeal.

DISCUSSION

The minor contends the juvenile court abused its discretion in placing her in an out-of-state placement. We disagree.

A court may not order out-of-state placement unless “[i]n-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.” (§ 727.1, subd. (b)(1).) No abuse of discretion will be found where substantial evidence supports the juvenile court’s decision in light of the purposes of juvenile law, which includes the best interests of the child, rehabilitation, the protection and safety of the public, and punishment. (*In re Oscar A.* (2013) 217 Cal.App.4th 750, 755-756; *In re Jose T.* (2010) 191 Cal.App.4th 1142, 1147; *In re S.S.* (1995) 37 Cal.App.4th 543, 550; § 202, subds. (a), (b), (e).)

Substantial evidence supports the juvenile court’s decision. The minor had a history of substance abuse, anger management, defiance, promiscuity, and out-of-control behavior. She refused to abide by the terms of probation while she was in her mother’s care and had already been terminated from two in-state placements. It was in her best interest to be in a more structured environment where she would receive guidance, supervision, and stricter sanctions; such a facility was not available in California. (See *In re Eddie M.* (2003) 31 Cal.4th 480, 507.)

The minor complains that a placement in a distant part of California was never considered. The court is not required to place the minor in state even if an in-state facility exists. (Compare *In re Oscar A.*, *supra*, 217 Cal.App.4th at p. 757 with *In re Khalid B.* (2015) 233 Cal.App.4th 1285, 1288-1290.)

The minor contrasts her case with that of the minor in *In re Oscar A.* who had a history of absconding and who had run away or terminated from four homes and two in-state facilities had denied him acceptance. (*In re Oscar A.*, *supra*, 217 Cal.App.4th at pp. 752-754.) The minor misplaces her reliance upon *In re Oscar A.* because that case

does not establish a minimum number of in-state placements before an out-of-state placement can be made. The minor relies on *In re Khalid B.* where the ward was immediately sent to an out-of-state placement after admitting he committed involuntary manslaughter. An in-state placement, however, was never tried by probation in that case even though three facilities had been suggested by the minor. (*In re Khalid B.*, *supra*, 233 Cal.App.4th at pp. 1287-1290.) Here, the minor was twice placed in a California facility; the placement was terminated both times. Accordingly, the minor's reliance on *In re Khalid B.* is likewise misplaced.

The minor also argues that in-state placements were not considered or investigated. We disagree. The minor's case spanned a two-year probationary period during which she received services from multiple agencies, participated in home supervision and electronic monitoring, was placed at the Juvenile Justice Center, and was terminated from two in-state placements. The committee concluded a more structured out-of-state placement was required.

Substantial evidence supports the juvenile court's finding that in-state facilities were inadequate or unavailable for the minor's needs and placement out-of-state was in the minor's best interest.

DISPOSITION

The orders of the juvenile court are affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

DUARTE, J.